

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 19 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

**STATE OF WASHINGTON;
SWINOMISH INDIAN TRIBAL
COMMUNITY; LUMMI NATION;
UPPER SKAGIT INDIAN TRIBE;
CONFEDERATED TRIBES AND
BANDS OF THE YAKAMA INDIAN
NATION; TULALIP TRIBES;
PORT GAMBLE S'KLALLAM INDIAN
TRIBE; JAMESTOWN S'KLALLAM
INDIAN TRIBE,**

Defendants - Appellees,

v.

SAMISH INDIAN TRIBE,

Movant - Appellant.

No. 08-35794

D.C. Nos. 2:01-sp-00002-RSM
2:70-cv-09213-RSM

ORDER

KOZINSKI, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be heard en banc pursuant to Circuit Rule 35-3.